

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA) 8:10CR283
Plaintiff,)
v.) ORDER
DARROW FOWLER,)
Defendant.)

This matter came on for hearing on the defendant's appeal (Filing No. [60](#)) of the Magistrate Judge's order (Filing No. [57](#)) denying the defendant's motion for leave to take a deposition (Filing No. [51](#)). AUSA Sandra Denton appeared for the government. The defendant appeared personally and with his attorney, James Webering. The parties argued the matter and the court inquired concerning the nature of the expert testimony needed by the government and the defendant.

The court finds that in the interest of judicial economy the deposition of the government's expert may be taken by the defendant only as it relates to the possibility of secondary transfer of DNA in this case and as it may apply generally.

If, after the deposition, the defendant believes that further expert testimony or analysis is needed, he shall file such request with the Magistrate Judge. The request must be supported by a transcript of the deposition and an affidavit by counsel.

The court also finds that the deposition should be taken within the following two weeks at a date and time convenient to the parties and the expert witness. As this is a discovery deposition, the defendant need not be present. Further, the court finds that a trial date in this matter should be set.

In the interests of justice, the speedy trial clock will be tolled pending the taking of this deposition.

IT IS THEREFORE ORDERED:

1. That the defendant's motion to depose the government's trial DNA expert is granted (Filing No. [51](#)), subject to the limited issues of secondary transfer of DNA as it applies in this case and in general.
2. That the costs for taking the deposition, including the expert's time during the deposition, are authorized and will be approved upon presentation by defense counsel of the appropriate CJA Authorization and Voucher form(s).
3. That the deposition of the government's trial DNA expert shall be completed on or before June 24, 2011. **In the interests of justice the speedy trial clock is tolled until said expert's deposition is completed or June 24, 2011, whichever occurs first.**
4. That trial in this matter shall commence on **July 5, 2011, at 8:30 a.m.** or as soon thereafter as it may be reached.

DATED this 9th day of June, 2011.

BY THE COURT:

s/ Joseph F. Bataillon
Chief District Judge

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